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| 08/997,879      | 12/24/97    | WATERS               | M W5020.1277/P1     |

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EXAMINER  
MANAHAN, T

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 3732     | 6            |

DATE MAILED:

02/05/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
08/997,879

Applicant(s)

Waters

Examiner  
Todd E. Manahan

Group Art Unit  
3732



☒ Responsive to communication(s) filed on 23 Dec 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-48 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 1-25, 28-32, 36, 37, and 46-48 is/are allowed.

☒ Claim(s) 26, 27, 33-35, 41, and 42 is/are rejected.

☒ Claim(s) 38-40 and 43-45 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3732

## **DETAILED ACTION**

### ***Reissue Applications***

The this Reissue application contains an Offer to Surrender the original patent, applicant is reminded that the original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisi (U.S. Patent No. 5,048,465) in view of Hohenstein (U.S. Patent No. 4,574,735).

Carlisi discloses a litter box comprising a pan-shaped housing defining an upwardly open litter chamber 14; a waste receptacle 30 located outside the litter chamber; a comb 54 disposed in the litter chamber; and means for driving the comb through the litter chamber. Carlisi discloses the claimed invention except for the waste level sensor for sensing when waste has reached a predetermined level in the waste receptacle. Hohenstein discloses a litter box in which includes a sensor 122 for sensing when the waste receptacle 90 is full, i.e. waste has reached a

Art Unit: 3732

predetermined level in the receptacle, and triggering a light, i.e. an alarm, to indicate that the receptacle needs emptying (see col. 6, lines 37-41). It would have been obvious to one skilled in the art to provide the litter box of Carlisi with a waste level sensor and alarm in view of Hohenstein in order to make the pet owner aware that the waste receptacle needs to be emptied.

Claims 27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisi in view of Strickland (U.S. Patent No. 4,844,011).

Carlisi discloses the claimed invention except for the mode selector means for selecting between at least manual operation mode and automatic operation mode. Strickland discloses a litter box in which mode selector means 54 are provided for selecting between manual actuation of the device or automatic actuation. It would have been obvious to one skilled in the art to provide the litter box of Carlisi with mode selector means in view of Strickland in order to permit the pet owner to activate the device either manually or automatically.

Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisi in view of Strickland as applied to claim 27 above, and further in view of Loctin (U.S. Patent No. 4,729,342).

Loctin discloses that it is known in the art to provide an automated litter box with a animal presence sensor comprising a radiation source 25 and a radiation detector 26 so as to prevent activation of the litter box while the animal is inside. It would have been obvious to one skilled in the art to provide the litter box of the combination Carlisi as modified by Strickland with an

Art Unit: 3732

animal presence sensor in view of Loctin in order to prevent activation thereof while the animal is present.

***Allowable Subject Matter***

Claims 1-25, 28-32, 36, 37, 46-48 are allowed.

Claims 38-40, 43-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 23 December 1998 have been fully considered but they are not persuasive.

In response to applicant's argument that there would be no need to provide the open litter box of Carlisi a visual indicator or alarm of full condition and thus the combination of Carlisi and Hohenstein would not have been obvious to one skilled in the art, firstly, it is to be noted that the alarm is not recited in claims 26 and 33. Applicant argues because the litter box of Hohenstein is enclosed and the waste container is thus not readily accessible, one skilled in the art would find the teaching of providing such waste receptacle with a sensor applicable only to litter boxes in which the waste receptacle is enclosed or inaccessible. Applicant is reminded that a reference is considered not only for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969). In the instant case,

Art Unit: 3732

Hohenstein discloses, in general, the application of a waste level sensor to a waste receptacle in a litter box. Although the Examiner concedes that the litter box of Carlisi is open and thus may permit one to visually see the level of waste in the receptacle, the waste level may not always be readily apparent, particularly if the box is placed in a corner, as is typically the case. Thus, one skilled in the art, in order to ensure that a full condition of the waste receptacle is noticeable, based on Hohenstein's disclosure, would provide the waste receptacle with a sensor and provide the alarm or indicator light on the front (i.e. the wall in which switch 92 is located) of the box of Carlisi.

In response to applicant's argument that Strickland and Carlisi are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Carlisi and Strickland are well within applicant's field of endeavor, i.e. animal litter boxes. Again, applicant appears to take a very narrow view of the teachings of Strickland, limiting such teachings only to belt driven, litter replacement type litter boxes. Once again, applicant is reminded that a reference is not limited to that which it expressly states, but rather for what it would reasonably have suggested to one skilled in the art. In general, Strickland discloses the application of a mode selector switch to an automated litter box, i.e. a litter box in which cleaning thereof can be automatically preformed. The switch is connected such that operation of the cleaning cycle can

Art Unit: 3732

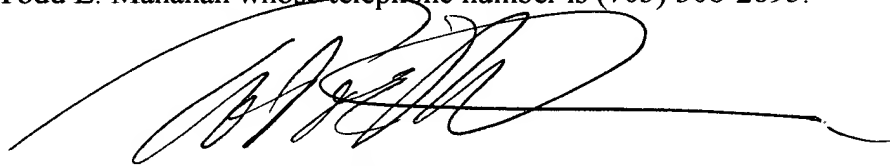
be performed either manually or automatically. Such switch would clearly have application to various automated devices, clearly would not be limited solely to belt driven litter replacement-type litter boxes.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is (703) 308-2695.

A large, stylized handwritten signature in black ink, likely belonging to Todd E. Manahan, is positioned above his printed name and title.

**Todd E. Manahan**  
Primary Examiner  
Art Unit 3732

T. E. Manahan  
February 3, 1999